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HOUSE BILL 215

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND;  
PERMITTING INVESTMENT IN PRIVATE EQUITY FUNDS WITH TRIBAL  
INVESTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990,  
Chapter 126, Section 5, as amended) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS  
INVESTMENTS.--

A. No more than six percent of the market value of  
the severance tax permanent fund may be invested in New Mexico  
private equity funds or New Mexico businesses under this  
section.

B. In making investments pursuant to Subsection A  
of this section, the council shall make investments in New

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1 Mexico private equity funds or New Mexico businesses whose  
2 investments or enterprises enhance the economic development  
3 objectives of the state.

4 C. The state investment officer shall make  
5 investments pursuant to Subsection A of this section only upon  
6 approval of the council, upon review of the recommendation of  
7 the private equity investment advisory committee and within  
8 guidelines and policies established by the council.

9 D. As used in this section:

10 (1) "New Mexico business" means, in the case  
11 of a corporation or limited liability company, a business with  
12 its principal office and a majority of its full-time employees  
13 located in New Mexico or, in the case of a limited partnership,  
14 a business with its principal place of business and eighty  
15 percent of its assets located in New Mexico; and

16 (2) "New Mexico private equity fund" means a  
17 limited partnership, limited liability company or corporation  
18 organized and operating in the United States and maintaining an  
19 office staffed by a full-time investment officer in New Mexico  
20 that:

21 (a) has as its primary business activity  
22 the investment of funds in return for equity in or debt of  
23 businesses for the purpose of providing capital for start-up,  
24 expansion, product or market development, recapitalization or  
25 similar business purposes;

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1 (b) holds out the prospects for capital  
2 appreciation from such investments;

3 (c) has at least one full-time manager  
4 with at least three years of professional experience in  
5 assessing the growth prospects of businesses or evaluating  
6 business plans and who has established permanent residency in  
7 the state;

8 (d) is committed to investing or helps  
9 secure investing by others, in an amount at least equal to the  
10 total investment made by the state investment officer in that  
11 fund pursuant to this section, in businesses with a principal  
12 place of business in the state and that hold promise for  
13 attracting additional capital from individual or institutional  
14 investors nationwide for businesses in the state; and

15 (e) accepts investments only from  
16 accredited investors as that term is defined in Section 2 of  
17 the federal Securities Act of 1933, as amended (15 USCA Section  
18 77(b)), and rules and regulations promulgated pursuant to that  
19 section, and federally recognized Indian tribes, nations and  
20 pueblos.

21 E. The state investment officer is authorized to  
22 make investments in New Mexico businesses to create new job  
23 opportunities and to support new, emerging or expanding  
24 businesses in a manner consistent with the constitution of New  
25 Mexico if:

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1 (1) the investments are made:

2 (a) in conjunction with cooperative  
3 investment agreements with parties that have demonstrated  
4 abilities and relationships in making investments in new,  
5 emerging or expanding businesses; or

6 (b) in New Mexico aerospace businesses  
7 that have received an award from the United States government  
8 or one of its agencies or instrumentalities: 1) in an amount,  
9 not less than one hundred million dollars (\$100,000,000), that  
10 is equal to at least ten times the investment from the  
11 severance tax permanent fund; and 2) for the purpose of  
12 stimulating commercial enterprises;

13 (2) an investment in any one business does not  
14 exceed ten percent of the amount available for investment  
15 pursuant to this section; and

16 (3) the investments represent no more than  
17 fifty-one percent of the total investment capital in a  
18 business; provided, however, that nothing in this subsection  
19 prohibits the ownership of more than fifty-one percent of the  
20 total investment capital in a New Mexico business if the  
21 additional ownership interest:

22 (a) is due to foreclosure or other  
23 action by the state investment officer pursuant to agreements  
24 with the business or other investors in that business;

25 (b) is necessary to protect the

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1 investment; and

2 (c) does not require an additional  
3 investment of the severance tax permanent fund.

4 F. The state investment officer shall make a  
5 commitment to the small business investment corporation  
6 pursuant to the Small Business Investment Act to invest three-  
7 fourths percent of the market value of the severance tax  
8 permanent fund to create new job opportunities by providing  
9 capital for land, buildings or infrastructure for facilities to  
10 support new or expanding businesses and to otherwise make  
11 investments to create new job opportunities to support new or  
12 expanding businesses in a manner consistent with the  
13 constitution of New Mexico. On July 1 of each year, the state  
14 investment officer shall determine whether the invested capital  
15 in the small business investment corporation is less than  
16 three-fourths percent of the market value of the severance tax  
17 permanent fund. If the invested capital in the small business  
18 investment corporation equals less than three-fourths percent  
19 of the market value of the severance tax permanent fund,  
20 further commitments shall be made until the invested capital is  
21 equal to three-fourths percent of the market value of the fund.

22 G. The state investment officer shall report  
23 semiannually on the New Mexico private equity investments made  
24 pursuant to this section. Annually, a report shall be  
25 submitted to the legislature prior to the beginning of each

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1 regular legislative session and a second report no later than  
2 October 1 each year to the legislative finance committee, the  
3 revenue stabilization and tax policy committee and any other  
4 appropriate interim committee. Each report shall provide the  
5 amounts invested in each New Mexico private equity fund, as  
6 well as information about the objectives of the funds, the  
7 companies in which each fund is invested and how each  
8 investment enhances the economic development objectives of the  
9 state. Each report shall provide the amounts invested in each  
10 New Mexico business."

11 Section 2. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2007.

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